

ORDINANCE NO. 5549

BILL NO. 169, CD1 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 9.28,  
MAUI COUNTY CODE, RELATING TO AIR AND REPLICA GUNS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance's purpose is to update regulations on air guns and incorporate regulations on replica guns into the chapter.

SECTION 2. Chapter 9.28, Maui County Code, is amended to read as follows:

**"Chapter 9.28**

**AIR GUNS AND REPLICA GUNS**

**Sections:**

<b>9.28.010</b>	<b><u>[Defined.] Definitions.</u></b>
<b>9.28.015</b>	<b><u>Air gun; restrictions on use.</u></b>
<b>9.28.020</b>	<b><u>[Use] Air gun; use by minors.</u></b>
<b>9.28.030</b>	<b><u>Sale of [balls,] pellets, [or missiles.] BB shots, or projectiles to minors prohibited.</u></b>
<b>9.28.031</b>	<b><u>Replica gun; prohibitions.</u></b>
<b>9.28.032</b>	<b><u>Air gun and replica gun; exceptions.</u></b>
<b>9.28.033</b>	<b><u>Air gun and replica gun; possession prohibited.</u></b>
<b>9.28.034</b>	<b><u>Possession of an air gun or replica gun with intent to facilitate the commission of a felony drug offense.</u></b>
<b>9.28.035</b>	<b><u>Seizure, forfeiture, and disposal.</u></b>
<b>9.28.040</b>	<b><u>Violation[—];[Penalty.]penalty.</u></b>

**9.28.010 [Defined.]** As used in this chapter, "air gun" means any weapon using compressed air or gas as the propelling force to eject therefrom a projectile in the shape of a ball, pellet or rod of any type or material, or any weapon of similar design, nature or function, whether usable or unusable, serviceable or

unserviceable, or modern or antique.] **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Air gun” means any instrument, by whatever name known, that is designed to expel a pellet or BB shot by action of compressed air or gas, or by the action of a spring or elastic, but does not include a firearm.

“Controlled substance” has the same meaning as defined in section 329-1 of the Hawaii Revised Statutes.

“Distribution” means the selling, transferring, prescribing, giving, or delivering to another, or the leaving, bartering, or exchanging with another, or the offering or agreeing to do the same.

“Replica gun” means any toy or other object, except an air gun or actual firearm, that:

1. Bears a resemblance to an actual firearm and that a reasonable person would have difficulty visually distinguishing from a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, assault weapon, starter pistol, inoperative firearm, or other firearm; and

2. Lacks any feature or aspect that would allow a reasonable person to readily distinguish it by sight from an actual firearm.

**9.28.015 Air gun; restrictions on use.** A. It is unlawful for any person to carry or display an air gun in a public place, on a public street, or in any area that is open to the public, unless the air gun is unloaded and in an enclosed container.

B. It is unlawful for any person to discharge an air gun from or across any street, sidewalk, alley, or public land, or any public place; except on an enclosed range designed and properly constructed for the use of the air gun that is discharged.

C. It is unlawful for any person to discharge any air gun on any private parcel of land or residence in a manner that the pellet or BB shot may reasonably be expected to traverse any ground or space outside the limits of the parcel of land or residence, or in a manner that persons or property may be endangered; except that nothing in this article may be deemed to prevent any person who has obtained a hunting license in accordance with chapter 183D, Hawaii Revised Statutes, from engaging in hunting in accordance with the law.

D. It is unlawful for any person to discharge any air gun in a manner or under circumstances that persons or property may be endangered.

**9.28.020 [Use] Air gun; use by minors.** A. It is unlawful for any minor under the age of eighteen years to own, acquire by purchase, gift, or otherwise possess, use, operate, or play with an

air gun; [provided, however,] except any person under the age of eighteen years, while under the immediate supervision of an adult, may possess, use, operate, or play with an air gun; [provided further that] except that it is not lawful for any [such] person under the age of eighteen years, under any circumstances, to possess, use, operate, or play with an air gun on any public highway, in any public park or playground, school premises, theater, airport, harbor, pier, or any other place of public resort. "Place of public resort," as used in this subsection [shall] does not include a bona fide public target range.

B. It is unlawful for any parent, guardian, or any other person having the care, custody, or control of any minor under the age of eighteen years to permit [such] the minor to own, acquire by purchase, gift, or otherwise, possess, use, operate, or play with an air gun except as otherwise provided in subsection A of this section.

C. Except as otherwise provided in this chapter, it is unlawful for any person to sell, transfer, or give an air gun to any minor under the age of eighteen years.

**9.28.030 Sale of [balls,] pellets, [or missiles] BB shots, or projectiles to minors prohibited.** It is unlawful for any person to sell to any minor under the age of eighteen years any [ball,] pellet, [or any other missiles] BB shots, or projectiles designed to be used for or by air guns.

**9.28.031 Replica gun; prohibitions.** A. No person may carry, possess, brandish, aim, point, or display to any other person a replica gun in a manner as to frighten, threaten, harass, panic, or annoy any other person.

B. No person may, with knowledge that a law enforcement officer, firefighter, emergency medical technician, paramedic or medical first responder is engaged in the performance of the law enforcement officer's, firefighter's, emergency medical technician's, paramedic's, or medical first responder's duties draw, exhibit, brandish, or display any replica gun in the law enforcement officer's, firefighter's, emergency medical technician's, paramedic's or medical first responder's presence.

C. No person may carry or possess, whether concealed or displayed, a replica gun in a motor vehicle in an area of the vehicle accessible to the occupants, including under or near the driver's seat or in the glove box or dashboard.

**9.28.032 Air gun and replica gun; exceptions.** Notwithstanding anything in this chapter to the contrary, the following actions are exempt from prohibitions on the use or possession of an air gun or replica gun as long as its use or

possession does not present an unreasonable risk of harm to any person or property:

A. The possession of an air gun or replica gun within the person's residence.

B. The use of an air gun or replica gun by a person under eighteen years of age, who is a duly enrolled member of any club, team, or society organized for education or training purposes and maintaining as a part of its facilities or having written permission to use an indoor or outdoor target range, when the air gun is used at the target range under the supervision, guidance, and instruction of a responsible adult.

C. The use of an air gun or replica gun by a person eighteen years of age or older at an enclosed range designed and properly constructed for the type of device being discharged.

D. The use of an air gun or replica gun in or on any private property as long as the projectile remains on the property from which it was discharged.

E. The use of an air gun or replica gun in hunting or going to or from the place of hunting under the law by a person who has obtained a hunting license under chapter 183D, Hawaii Revised Statutes, or who, if the person is under eighteen years of age, has obtained a hunting license and is accompanied by an adult who has obtained a hunting license.

F. The use of an air gun or replica gun by a person involved in a living history presentation or other activity for historical interpretation or educational purposes, or by a person participating in a parade if the activity or parade participant is associated with an established historical organization, museum, military preservation organization, or other group with a mission to educate the public at various events through the use of historical artifacts, clothing, vehicles, aircraft, maritime vessels, and firearms or replicas.

G. The use of an air gun or replica gun when necessary to protect life or property under circumstances that would warrant the use of force under Hawaii law or to deter any dangerous animal.

H. The firing or discharge of paintballs at a facility where all participants have consented to engage in paintball activities.

I. The use or possession of an air gun or replica gun by an authorized law enforcement officer acting in the course and scope of duty.

J. The use of nail guns or other carpentry tools being used for their intended purpose.

K. The use of air guns for animal control measures taken by government agencies.

L. The use of air guns or replica guns with blank cartridges for a show or theatrical production, signal or ceremonial purposes in athletics or sports, or by a military organization.

**9.28.033 Air gun and replica gun; possession prohibited.** A. It is unlawful for any person who is a fugitive from justice, or prohibited from possessing any firearm or ammunition, to possess any air gun or replica gun.

B. It is unlawful for any person who is under indictment for, or has waived indictment for, or has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug to possess any air gun or replica gun.

C. It is unlawful for any person who:

1. Is or has been under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, Hawaii Revised Statutes, or intoxicating liquor.

2. Has been acquitted of a crime on the grounds of mental disease, disorder, or defect in accordance with section 704-411, Hawaii Revised Statutes.

3. Is or has been diagnosed as having a significant behavioral, emotional, or mental disorder as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes; to own, possess, or control any air gun, unless the person has been medically documented to be no longer adversely affected by the addiction, abuse, dependence, mental disease, disorder, or defect.

4. It is unlawful for any person who is less than twenty-five years old and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug to own, possess, or control any air gun or replica gun.

5. It is unlawful for any person who has been restrained under an order of any court from contacting, threatening, or physically abusing any person, to possess, control, or transfer ownership of any air gun or replica gun so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of an air gun or replica gun. The protective order or restraining order must specifically include a statement that possession, control, or transfer of ownership of an air gun or replica gun by the person named in the order is prohibited. The person must

relinquish possession and control of any air gun and replica gun owned by that person to the police department for safekeeping for the duration of the order or extension. At the time of service of a protective order or restraining order involving an air gun or replica gun issued by any court, a police officer may take custody of any and all air guns and replica guns in plain sight, those discovered under a consensual search, and those air guns and replica guns surrendered by the person restrained.

6. Any person disqualified from ownership, possession, control, or the right to transfer ownership of air guns and replica guns under this section must surrender or dispose of all air guns and replica guns in compliance with section 134-7.3, Hawaii Revised Statutes.

**9.28.034 Possession of an air gun or replica gun with intent to facilitate the commission of a felony drug offense.** It is unlawful for any person to knowingly possess an air gun or replica gun with the intent to facilitate the commission of a felony offense involving the distribution of a controlled substance.

**9.28.035 Seizure, forfeiture, and disposal.** Any police officer who arrests any person for possessing, using, lending, renting, giving, or transferring an air gun or replica gun in violation of any provisions of this article must take custody of the air gun or replica gun. Upon conviction of the person, the seized air gun or replica gun will be forfeited to the County. Any forfeited air gun or replica gun will remain in the custody of the department of police for one year and will be destroyed; except that the air gun or replica gun will be retained for subsequent proceedings, both civil or criminal, and until any action is concluded, if any person desiring the use of the forfeited air gun or replica gun as evidence files with the chief of police a written notice of an intention to use the air gun or replica gun before the destruction date.

**9.28.040 Violation[—];[Penalty] penalty.** Any person who violates any provision of this chapter [shall,] will, upon conviction, be punished by a fine not exceeding [one hundred dollars.] \$500, or by imprisonment for a period not to exceed one year, or both.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This Ordinance takes effect on November 1, 2023.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

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MICHAEL J. HOPPER

Department of the Corporation Counsel

County of Maui

drip:misc:006abill01:jpp

DRIP-6 2023-06-27 Bill 169 Ord Amd Ch 9.28

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chad Lee", is written over a horizontal line.

Upon the request of the Mayor.



WE HEREBY CERTIFY that the foregoing BILL NO. 169, CD1 (2022)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of July, 2023, by the following vote:

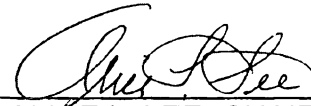
Alice L. LEE Chair	Yuki Lei K. SUGIMURA Vice-Chair	Tom COOK	Gabriel JOHNSON	Natalie A. KAMA	Tamara A. M. PALTIN	Keani N. W. RAWLINS- FERNANDEZ	Shane M. SINENCI	Nohelani U'U-HODGINS
Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 18th day of July, 2023.

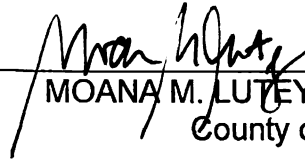
DATED AT WAILUKU, MAUI, HAWAII, this 18th day of July, 2023.

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23 JUL 19 2023



ALICE L. LEE, CHAIR  
Council of the County of Maui



MOANA M. LUTEY, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 19<sup>th</sup> DAY OF JULY, 2023.



RICHARD T. BISSEN, JR. MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5549 of the County of Maui, State of Hawaii.



MOANA M. LUTEY, COUNTY CLERK  
County of Maui

Passed First Reading on July 7, 2023  
Effective date of Ordinance November 1, 2023

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OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5549, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui